

THE HONORABLE ROBERT S. LASNIK  
NOTE ON MOTION CALENDAR:  
NOVEMBER 18, 2022

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PRINCIPAL FINANCIAL SERVICES,  
INC., an Iowa corporation,  
  
Plaintiff,

v.

PRINCIPAL WARRANTY, LLC, d/b/a  
PRINCIPAL WARRANTY CORP.,  
  
Defendant.

NO. 2:22-cv-01096-RSL

PLAINTIFF’S REPLY IN SUPPORT  
OF MOTION TO STRIKE  
AFFIRMATIVE DEFENSES

NOTE ON MOTION CALENDAR:  
November 18, 2022

Defendant’s Opposition to Plaintiff’s Motion to Strike carefully builds several strawmen while implicitly admitting that its affirmative defenses are either (1) insufficiently plead or (2) mere denials of the allegations of the complaint. These arguments should be rejected.

**I. DEFENDANT’S AFFIRMATIVE DEFENSES FAIL EVEN UNDER THE NOTICE PLEADING STANDARD**

Defendant spends two pages of its brief arguing that “Plaintiff PFS is wrong to suggest that the *Twombly/Iqbal* plausibility standard applies to affirmative defenses . . .” Opp. at 2. Plaintiff did not make that argument. Rather, Plaintiff noted that courts in this District have

1 applied *both* the plausibility and notice pleading standards, and that Defendant’s affirmative  
2 defenses fail under even the lower standard. Dkt. No. 19 at 4.

3 The *Firs Home Owners Association v. City of Seatac* case, cited in Plaintiff’s motion,  
4 is an example of this Court using the lower notice pleading standard to strike affirmative  
5 defenses just like those asserted in this case. 2020 WL 1441123, at \*1 (Case No. 19-cv-1130-  
6 RSL, W.D. Wash., March 23, 2020). In that case, this Court struck two affirmative defenses  
7 that “simply assert that the plaintiff will be unable to prove its claims” and one affirmative  
8 defense – waiver – that failed to contain facts to put Plaintiff on adequate notice. *Id.* Here, the  
9 Defendant admits in its opposition brief that affirmative defenses two through six and eight are  
10 not affirmative defenses at all but instead mere denials of elements of Plaintiff’s likelihood of  
11 confusion case. Opposition Brief at III.C.2-6, 8.

12 Regarding its equitable affirmative defenses (No. 9), Defendant misstates Plaintiff’s  
13 argument. Contrary to Defendant’s assertion, Plaintiff did not “claim that ‘laches’ is not a  
14 proper affirmative defense[.]” Opposition Brief at 13. Plaintiff has asked the Court to strike  
15 this affirmative defense because Defendant made no factual allegations at all in its support. It  
16 is not even clear whether this affirmative defense is limited to laches, or whether it includes  
17 other equitable defenses: “9. Some or all of Plaintiff’s claims may be barred by equitable  
18 principles, including laches.” Dkt. No. 18 at 10.

19 Defendant’s First Amendment affirmative defense (No. 7) also suffers from a lack of  
20 facts to put the Plaintiff on adequate notice. Defendant’s Opposition Brief appears to argue that  
21 the Lanham Act’s prohibitions on dilution are unconstitutional under the First Amendment, but  
22 that is not what their affirmative defense states. Affirmative Defense No. 7 simply notes that  
23 “principal” is a word that has two dictionary definitions, and that the Defendant’s use of that  
24

word “plays off both those definitions.” Defendant’s Opposition Brief provides no clarity how that provides a cognizable First Amendment defense is in this case, instead arguing generally that the First Amendment does sometimes apply in trademark cases. That, of course, is not in dispute. What is in dispute is whether the Defendant has provided facts sufficient to put Plaintiff on notice of how Plaintiff’s claims would deny Defendant a First Amendment right.

## **II. PLAINTIFF DOES NOT OBJECT TO DEFENDANT’S REQUEST TO AMEND AFFIRMATIVE DEFENSES SEVEN AND NINE**

Defendant submits a declaration to add factual support to its affirmative defenses, thereby implicitly admitting that its defenses are factually inadequate. Defendant’s Opposition then asks this Court to grant leave to amend the affirmative defenses should the Court find them deficient. As Plaintiff explained in the opening brief, the majority of the affirmative defenses are not affirmative defenses at all, but rather mere denials of elements of Plaintiff’s claim for likelihood of confusion. As mere denials, amending to add further facts would be futile. Affirmative Defenses Seven (First Amendment) and Nine (equitable defenses) do not fall into this category, and Plaintiff does not object to Defendant’s request to amend with respect to these two Affirmative Defenses.

## **III. CONCLUSION**

For the foregoing reasons, and for the reasons stated in Plaintiff’s Opening Brief, Plaintiff respectfully requests that this Court strike each of Defendant Principal Warranty’s affirmative defenses.

DATED this 18th day of November, 2022.

NEAL & McDEVITT, LLC

By: /s/Jeffrey T. Norberg  
 Jeffrey T. Norberg, pro hac vice admitted  
 1776 Ash Street  
 Northfield, IL 60093

(847) 881-2468 (main)  
jnorberg@nealmcdevitt.com

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

Ramona N. Hunter, WSBA #31482  
Hailey K. Delay, WSBA #54887  
1700 7th Avenue, Suite 2100  
Seattle, WA 98101  
(206) 709-5900 (main)  
ramona.hunter@wilsonelser.com  
hailey.delay@wilsonelser.com

*Attorneys for Plaintiff Principal Financial  
Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/Jeffrey T. Norberg

Jeffrey T. Norberg